

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

COMPTON APARTMENT ASSOCIATES, LP
Plaintiff Below,

VS

CARLTILIA BAKER
CARLTON ARMSTEAD
Defendant Below,

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C.A. No. JP13-19-001412

TRIAL DE NOVO

Submitted: May 1, 2019
Decided: May 31, 2019

APPEARANCES:

Plaintiff represented by David Zerbato, Esq.
Defendant represented by Gilberte Pierre, Esq.

Sean McCormick, Deputy Chief Magistrate
Beatrice Freel, Justice of the Peace
Nina Bawa, Justice of the Peace

ORDER ON TRIAL DE NOVO

Plaintiff filed this civil action seeking past due rent and possession on January 22, 2019. The trial before a single Justice of the Peace was held on March 14, 2019. A judgment was awarded to Plaintiff on April 3, 2019. Defendant appealed the decision to a three-judge panel on April 5, 2019. A panel consisting of Deputy Chief Magistrate McCormick, Judge Freel and Judge Bawa heard the trial de novo on May 1, 2019. This is the Court's decision after trial. For the reasons stated below, the Court awards a judgment for possession to Plaintiff.

Plaintiff Compton Park Apartments seeks possession of the rental unit from Defendants. Plaintiff mailed a seven-day rules violation notice to Defendants on November 28, 2018 via certificate of mailing for interfering with the building door in such a way that the door was no longer secure. Plaintiff then sent a termination notice on January 14, 2019 via certificate of mailing due to continued non-compliance regarding putting items in the door mechanism. Plaintiff argues that Defendants' behavior violates Paragraph 13 of the lease, Paragraph 14 of the lease, and Rules and Regulations Paragraph 20. Plaintiff's witness, Jim Fitzgerald, Director of Security, testifies that the building door is supposed to be locked 24 hours per day, seven days per week for security, and Defendants' interference with the door resulted in the building being unsecured which was a safety concern for other residents in the building. Plaintiff asserts they did not see anyone else tamper with the door on the video. Plaintiff's witness, Phyllis Randall, Property Manager, testifies that she was not directly informed by Defendants that they did not have a key to the building until February 8, 2019, and they were provided new keys in March 2019 without charge. Plaintiff asserts that to change the keys, six pins have to be changed and twelve new keys made for all the residents in the building. Plaintiff asserts that the actual cost for changing the locks is more than \$200.00. Plaintiff asserts that Defendants lost their keys three times – once in June 2013, once in March 2016 and the current instance. Plaintiff argues Defendants could have accessed the building even without a key without tampering with the door by calling the office or maintenance. Plaintiff submits into evidence (1) photographs of Defendants' interaction with the building door from October 28, 2018 through November 6, 2018, (2) videos of the Defendants putting something in the door mechanism from January 8, 2019, January 11, 2019 and January 20, 2019, (3) lease between Plaintiff and Defendant dated March 6, 2012 (4) house rules signed by both Defendants January 6, 2017, (5) 7-day letter dated November 28, 2018 with proof of mailing, (6) immediate termination notice dated January 14, 2019 and proof of mailing, (7) amended notice of immediate termination dated February 14, 2019 with proof of service which added additional dates of violations, (8) invoice for a new key dated March 30, 2016, (9) ledger and (10) receipt for new keys from vendor dated February 27, 2019.

Defendants argue they were given insufficient opportunity to cure and the amount charged for them to cure the violation was unreasonable. Defendants assert that they lost the key to the building on November 7, 2018 or November 8, 2018 and upon verbal notification in December 2018, Plaintiff refused to give them a key without them paying \$200.00 or \$400.00 for a new key. Defendants argue that the fee was unreasonable and unaffordable as this is subsidized housing, particularly as Plaintiff refused to allow for a payment plan. Defendants assert they were unable to cure the problem because of Plaintiff's refusal to allow them access to the unit. Defendants argue they did not have access to their building until March 2019. Defendant Baker admits during cross-examination that she did tamper with the door prior to November 28, 2018 but that multiple other tenants also tampered with the door.

Defendants argue that Plaintiff is not consistent in enforcement of the rules, as another tenant who tampered with the door only received a verbal warning. Defendant submits into evidence (1) letter dated March 6, 2019 requesting reasonable accommodation for Defendant Armstead to show that Defendants requested a payment plan for the key fee and (2) video of another tenant tampering with the door on January 11, 2019.

Plaintiff relies on 25 Del. C. § 5513(a), which states:

25 Del. C. § 5513 Landlord remedies relating to breach of rules and covenants.

(a) If the tenant breaches any rule or covenant which is material to the rental agreement, the landlord shall notify the tenant of such breach in writing, and shall allow at least 7 days after such notice for remedy or correction of the breach. This section shall not apply to late payment of rent which is covered under § 5502 of this title.

(1) Such notice shall substantially specify the rule allegedly breached and advise the tenant that, if the violation continues after 7 days, the landlord may terminate the rental agreement and bring an action for summary possession. Such notice shall also state that it is given pursuant to this section, and if the tenant commits a substantially similar breach within 1 year, the landlord may rely upon such notice as grounds for initiating an action for summary possession. The issuance of a notice pursuant to this section does not establish that the initial breach of the rental agreement actually occurred for purposes of this section.

(2) If the tenant's breach can be remedied by the landlord, as by cleaning, repairing, replacing a damaged item or the like, the landlord may so remedy the tenant's breach and bill the tenant for the actual and reasonable costs of such remedy. Such billing shall be due and payable as additional rent, immediately upon receipt.

(3) If the tenant's breach of a rule or covenant also constitutes a material breach of an obligation imposed upon tenants by a municipal, county or state code, ordinance or statute, the landlord may terminate the rental agreement and bring an action for summary possession.

The lease between the parties in Paragraph 13 (e) states: “The Tenant agrees not to make or permit noises or acts that will disturb the rights or comfort of neighbors”.

The parties disagree on how and when Plaintiff was notified about the lost keys; Plaintiff asserts that she overheard Defendant Baker say she lost her keys in December 2018 but Defendant Baker did not directly inform Plaintiff about the lost keys until February 8, 2019. Defendant Baker asserts that she verbally told Plaintiff in December 2018 about the lost keys. While the Court finds it troubling that Plaintiff would allow the tenant to go without a key to the building for weeks, the issue before the Court is Defendants’ violation of the lease. Defendants had other remedies available to them in order for them to enter the building which would not have involved violating the lease. The issue currently before the Court is whether Defendants breached the lease by tampering with the door mechanism, thus impacting the safety of the residents in the building. Defendant Baker admits to tampering with the door prior to the 7-day notice. In addition, the videos from January 2019 are clear that Defendants subsequently tampered with the door after the 7-day notice. Defendants can be seen fidgeting with the mechanism on

the door for a prolonged amount of time. Additionally, it is clear that individuals are then subsequently able to enter the building without a key.

The Court finds that Plaintiff met the burden of proof to show that Defendants failure to comply with the lease after the 7-day notice threatens the safety and right to peaceful enjoyment of the premises by other residents. The Court finds, by a preponderance of the evidence, in favor of Plaintiff Compton Park Apartments against Defendants Cartilia Baker and Carlton Armstead for possession plus \$45.00 court costs.

IT IS SO ORDERED 31st day of May, 2019

/s/ Sean P. McCormick (SEAL)
Deputy Chief Magistrate
On behalf of the 3-Judge Panel

Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).